

DUNCAN MILLER, ET AL.

IBLA 77-227, 77-243  
77-251, 77-401

Decided September 27, 1977

Appeals from decisions of Utah State Office, Wyoming State Office, and New Mexico State Office, Bureau of Land Management, requiring additional advance rental payments on separate noncompetitive oil and gas lease offers U-31450, U-32263, W-56384, and NM-28411.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

Increased per acre rental, as directed under January 5, 1977, revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after February 1, 1977, including leases for which offers, both simultaneous and over-the-counter, were filed prior to revision of the regulation.

APPEARANCES: Duncan Miller, Boulder City, Nevada, pro se; Darryl L. Harvey, Esq., Bosworth and Slivka, Denver, Colorado, for appellants Farabaugh et al.; William C. Kirkwood, Casper, Wyoming, pro se; Guy M. Willis, Dallas, Texas, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Appellants in four separate actions appeal from decisions of the Utah State Office, Wyoming State Office, and New Mexico State Office, Bureau of Land Management, requiring additional advance rental payments on appellants' separate noncompetitive oil and gas lease offers U-31450, U-32263, W-56384, and NM-28411. See Appendix.

In each case, appellant initially filed a first year's rental payment in the amount of \$.50 per acre or fraction thereof. The \$.50 rate was in accordance with the regulations in force at that time. On January 5, 1977, at 42 F.R. 1032, Departmental regulation 43 CFR 3103.3-2(a) was revised to increase to \$1 the per acre rental on all noncompetitive oil and gas leases issued after February 1, 1977. Appellants argue they filed their offers to lease and paid their advance rentals prior to the date of the change in the regulation and thus should not be subjected to the higher rental.

[1] The increased per acre rental, as directed under the revision of 43 CFR 3103.3-2(a), is applicable to all noncompetitive oil and gas leases issued after February 1, 1977, including leases for which simultaneous and over-the-counter offers were filed prior to the revision. E.g., D. R. Gaither, 32 IBLA 106 (1977); William S. Schicktanz, 32 IBLA 20 (1977); Altex Oil Corporation, 32 IBLA 18 (1977); Raymond N. Joeckel, 29 IBLA 170 (1977). The filing of an oil and gas lease offer does not confer upon an offeror any vested right in the lease property so as to shield the offeror from application of the regulation as revised. See Raymond N. Joeckel, supra at 173.

Appellant Farabaugh suggests that the intent of the revision, as shown by the Departmental history, was "that every effort will be made to avoid penalizing a lease lottery applicant with the higher rental rate if such penalty would be the result of activity by the Bureau." Farabaugh argues that a BLM mistake stalled issuance of his lease, and that he should be excepted from the increased rental. We cannot agree. The revised regulation at 43 CFR 3103.3-2(a) explicitly mandates that all noncompetitive leases issued on and after February 1, 1977, will bear the rental increase, and no exception for cases of administrative error or delayed BLM processing is provided by the regulation. See Altex Oil Corporation and William S. Schicktanz, both supra, on this point.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Joseph W. Goss  
Administrative Judge

We concur:

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Edward W. Stuebing  
Administrative Judge

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Joan B. Thompson  
Administrative Judge

## APPENDIX

IBLA <u>No.</u>	<u>Appellant</u>	Type Serial <u>No.</u>	Date of <u>Offer</u>	Increased Offer <u>Filed</u>	Rental <u>Due</u>	
77-227	Duncan Miller	U-31450	Simultaneous 1975	Oct.	\$80	
77-243	Donald J. Farabaugh, Arthur H. Bosworth	W-56384	Simultaneous 1976	July	\$220	
77-251	William C. Kirkwood	U-32263	Regular 1976	Feb. 3,	\$915	
77-401	Guy M. Willis	NM-28411	Regular 1976	June 28,	\$318	

